U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TEODULO VILLAVAZO and DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, Vale, OR

Docket No. 02-1614; Submitted on the Record;
Issued January 14, 2003

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective July 16, 2000 on the grounds that he had no further condition or disability due to his August 18, 1990 employment injury; and (2) whether appellant has established that he had continuing disability after July 16, 2000 causally related to his accepted employment injury.

On August 19, 1990 appellant, then a 31-year-old firefighter, filed a claim for a traumatic injury to his abdomen on August 18, 1990 while in the performance of duty. The Office accepted appellant's claim for a right inguinal hernia and post-traumatic ilioinguinal entrapment. In February 1999, the Office referred appellant for vocational rehabilitation.

On November 19, 1998 Dr. Lawrence E. Green, a Board-certified neurologist and appellant's attending physician, referred appellant to Dr. Michael Weiss, a Board-certified physiatrist, for evaluation and treatment. In a report dated January 6, 2000, Dr. Weiss discussed appellant's history of injury and medical treatment received. He listed detailed findings on physical examination. Dr. Weiss noted that appellant had "[c]hronic pain without evidence of focal weakness, sensory loss or reflex change on physical examination." He requested copies of appellant's medical records.

In a follow-up report dated March 4, 2000, Dr. Weiss reviewed the medical evidence of record, including the results of diagnostic testing and noted that appellant had been diagnosed with a "stretch injury to either his ilioinguinal or genital femoral nerve." He stated:

> "Whether or not [appellant] has a stretch injury to his ilioinguinal or genital femoral nerve or is generally immaterial except for the issue of a small impairment. There are no specific functional limitations related to injury to the ilioinguinal or genital femoral nerve. Clearly, a large component of his symptoms must be considered nonorganic in nature and there are likewise no specific

> physical functional limitations related to psychologically determined symptoms. Barriers to his return to work are primarily psychological and conditioning. The deconditioning was created by his chronic pain syndrome along with long-time off work. Any formal functional capacity testing is likely to be invalid in this case."

Dr. Weiss recommended a "vigorous work conditioning program," as well as counseling and medication for appellant's depression.

By letter dated April 3, 2000, the Office requested a medical report from Dr. Weiss discussing appellant's current condition and work restrictions. In a report dated April 7, 2000, Dr. Weiss found that, by history, appellant sustained a groin strain with chronic pain syndrome causally related to his employment injury. He indicated that appellant's current diagnosis was chronic pain syndrome without "objective abnormalities or focal findings on his current physical examination." In an accompanying work restriction evaluation, Dr. Weiss opined that appellant could work for eight hours a day without limitations.

By letter dated May 31, 2000, the Office informed appellant that it proposed to terminate his compensation on the grounds that he had no further disability due to his accepted employment injury.

In a letter dated June 28, 2000, appellant expressed disagreement with the Office's proposal to terminate his compensation.

In a decision dated July 6, 2000, the Office terminated appellant's compensation benefits effective July 16, 2000.

On September 25, 2001 appellant requested reconsideration and submitted additional medical evidence. In a decision dated February 28, 2002, the Office denied modification of its July 6, 2000 termination of compensation.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective July 16, 2000.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[1] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[2] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[3]

[1] *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[2] *Id.*

[3] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

In this case, the Office met its burden of proof to terminate appellant's compensation effective July 16, 2000 in finding that the well-rationalized opinion of Dr. Weiss, to whom appellant was referred by his attending physician, constituted the weight of the medical evidence. In a report and accompanying work restriction evaluation dated April 7, 2001, Dr. Weiss found that appellant could work for eight hours a day without limitations.

The Board has carefully reviewed the opinion of Dr. Weiss and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue in this case. Dr. Weiss, in his January 6, March 4 and April 7, 2000 reports, provided a through factual and medical history and accurately summarized the relevant medical evidence. Moreover, he provided a proper analysis of the factual and medical history and findings on examination and reached conclusions regarding appellant's condition, which comported with this analysis.[4] Dr. Weiss included medical rationale for his opinion by explaining that the findings upon examination did not show any objective residuals of appellant's August 18, 1990 employment injury. He found that appellant had no work limitations due to his accepted employment injury.[5]

The remaining evidence of record submitted prior to the Office's termination of compensation is insufficient to support that appellant had continuing disability due to his employment injury. In an office visit note dated June 12, 2000, received by the Office on July 6, 2000, Dr. Green noted that appellant had seen Dr. Weiss, "who indicated [that] he had a chronic pain syndrome, but that he was capable of working eight hours a day." Dr. Green further noted that appellant would no longer receive disability compensation. He stated:

> "We spent a great deal of time discussing in detail the psychosocial consequences of his injury, indicating that [appellant] will not likely be left with any physical impairment. Pain is the only thing that inhibits him from working and that apparently is not a strong enough factor to keep him from working. [Appellant] will basically have to do what he can do and I will be happy to write him a release for any kind of work that he thinks he can do. There is not much else I can do at this point in time."

As Dr. Green indicated that he would release appellant for any kind of work, his report does not support a finding that appellant had any disability from employment.

The Board also finds that appellant has not established that he had continuing disability after July 16, 2000 causally related to his accepted employment injury.

Given that the Board has found that the Office properly relied upon the opinion of Dr. Weiss in terminating appellant's compensation, the burden of proof shifts to appellant to establish that he remains entitled to compensation after that date.[6] To establish causal

[4] *See Melvina Jackson*, 38 ECAB 443 (1987).

[5] While Dr. Weiss noted that appellant had chronic pain, he further found that appellant had "no specific physical functional limitations related to psychologically determined symptoms."

[6] *George Servetas*, 43 ECAB 424 (1992).

relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.[7]

Appellant submitted an office visit note dated September 6, 2000 from Dr. Green, who noted that appellant related that he was unable to work due to pain. Dr. Green stated that he informed appellant that "[h]e will have to get out and work as best he can and just simply have to learn to live with the pain." In an office visit note dated April 16, 2001, Dr. Green indicated that he treated appellant for hip pain and that a hip x-ray was normal. As he did not find appellant disabled due to his accepted employment injury, these reports are of little relevance to the issue at hand.

Appellant further submitted a prescription pad note from Dr. Green dated March 2, 1994, in which he found that appellant was indefinitely disabled from firefighting. Dr. Green's March 2, 1994 finding is of no relevance to the pertinent issue of whether appellant had any continuing disability after July 18, 2000 due to his accepted employment injury. Appellant, consequently, has not met his burden of proof to establish any employment-related continuing disability.

The decision of the Office of Workers' Compensation Programs dated February 28, 2002 is affirmed.

Dated, Washington, DC
January 14, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] *John M. Tornello*, 35 ECAB 234 (1983).